

RAYMOND W. QUIGLEY

IBLA 79-196

Decided December 19, 1979

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting as untimely notices of location for six mining claims. Lucky Nos. 1-6.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Determination of Validity -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to file such notice shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

APPEARANCES: Raymond W. Quigley, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Raymond W. Quigley appeals from a decision of the Montana State Office, Bureau of Land Management (BLM), dated January 15, 1979, returning notices of location for six mining claims identified as Lucky Nos. 1-6, because they had not been filed within 90 days after the date of location of the claims as required by section 314, Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the corresponding regulation, 43 CFR 3833.1-2.

[1] Section 314 of FLPMA requires the owner of an unpatented lode or placer mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the BLM office designated by the Secretary of the Interior within 90 days after the date of the location. In addition, section 314 specifies that failure to timely file such record "shall be deemed conclusively to constitute an abandonment of the mining claim" by the owner.

The pertinent regulation, 43 CFR 3833.1-2(b), provides as follows:

(b) The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site filed under state law \* \* \*.

Appellant located Lucky No. 1 on October 1, 1978; Lucky Nos. 2-4 on October 2, 1978; and Lucky Nos. 5 and 6 on October 3, 1978. Therefore, the 90-day deadlines fell on December 30, 1978, December 31, 1978, and January 1, 1979, respectively. Since these days were Saturday, Sunday and a holiday, appellant actually had until January 2, 1979, to submit the required notices. BLM received appellant's documents on January 8, 1979. In his notice of appeal, appellant states that his filing was late because he was "unable to get the claims oriented to the map in time." Departmental regulations require that a map be filed with the notices of locations. 43 CFR 3833.1-2(c).

This Board has held repeatedly that when a notice of a mining claim is not filed with BLM within 90 days from the date of location as required by the statute and regulation, it has no force and effect. M. J. Reeves, 41 IBLA 92 (1979); William E. Rhodes, 38 IBLA 127 (1978); R. Wade Holder, 35 IBLA 169 (1978); Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (1978). Under the regulation, the requirements for filing are clear. All documents must be received and date stamped by the proper BLM office within 90 days of location. 43 CFR 3833.1-2(b). This Department has no authority to waive the statutory time periods. Therefore, BLM properly rejected the notices.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski  
Administrative Judge

We concur:

Newton Frishberg  
Chief Administrative Judge

Joseph W. Goss  
Administrative Judge

